

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

RONALD M., II,¹

Plaintiff,

5:22-cv-650 (BKS/ML)

v.

KILOLO KIJAKAZI, Acting Commissioner of Social
Security,²

Defendant.

Appearances:

For Plaintiff:

Howard D. Olinsky
Olinsky Law Group
250 South Clinton Street, Suite 210
Syracuse, NY 13202

For Defendant:

Carla Freedman, United States Attorney
Fergus J. Kaiser, Special Assistant United States Attorney
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff filed this action under 42 U.S.C. § 405(g) seeking review of a decision by the Commissioner of Social Security (the “Commissioner”) denying Plaintiff’s applications for Supplemental Social Security Income and Social Security Disability Insurance benefits. (Dkt. No. 1). This matter was referred to United States Magistrate Judge Miroslav Lovric for a Report-

¹ In accordance with the local practice of this Court, Plaintiff’s last name has been abbreviated to protect his privacy.

² Pursuant to Fed. R. Civ. P. 25(d), the current Acting Commissioner of Social Security, Kilolo Kijakazi, has been substituted in place of her predecessor, Commissioner Andrew Saul.

Recommendation. (Dkt. No. 8); N.D.N.Y. L.R. 72.3(e). On May 9, 2023, after reviewing the parties' briefs, (Dkt. Nos. 10, 12, 13), and the Administrative Record, (Dkt. No. 9), Magistrate Judge Lovric issued a Report-Recommendation recommending that Plaintiff's motion for judgment on the pleadings be granted and that the matter be reversed and remanded to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings. (Dkt. No. 14, at 19). Magistrate Judge Lovric advised the parties that under 28 U.S.C. § 636(b)(1), they had "14 days within which to file written objections" to the Report-Recommendation and that "failure to object to th[e] report within 14 days will preclude appellate review." *Id.* (citing *Roldan v. Racette*, 984 F.2d 85 (2d Cir. 1993); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72). Neither party filed an objection to the Report-Recommendation.

As no objection to the Report-Recommendation has been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation, the Court agrees with Magistrate Judge Lovric's conclusion that the ALJ committed procedural error when weighing the persuasiveness of Dr. Brodowski's and Dr. Noia's opinions by failing to adequately explain how she considered the supportability and consistency of those opinions. (Dkt. No. 14, at 15–16); *see Loucks v. Kijakazi*, No. 21-cv-1749, 2022 WL 2189293, at *2, 2022 U.S. App. LEXIS 16829, at *3 (2d. Cir. June 17, 2022) (finding that "the ALJ committed procedural error by failing to explain how it considered the supportability and consistency of medical opinions in the record"). The lack of explanation is problematic in light of the evidence in the record that is consistent with the opinions of Dr. Brodowski and Dr. Noia. *See Jaleesa H. v. Comm'r of Soc. Sec.*, 580 F. Supp. 3d 1, 9 (W.D.N.Y. 2022) (concluding remand was warranted where the

“ALJ’s conclusory analysis” of the supportability and consistency factors “preclude[d] the Court from undertaking meaningful review of his evaluation of [the consultative examiner’s] opinion”). Here, the Commissioner’s decision cannot be affirmed despite this procedural error because “a searching review of the record” does not “assure[] [the court] that the substance of the [regulation] was not traversed.” *Loucks*, 2022 WL 2189293, at *2, 2022 U.S. App. LEXIS 16829, at *4 (citation omitted); *see also John L.M. v. Kijakazi*, No. 21-cv-368, 2022 WL 3500187, at *2, 2022 U.S. Dist. LEXIS 147761, at *5–7 (N.D.N.Y. Aug. 18, 2022).

For these reasons, it is hereby


ORDERED that the recommendation in Magistrate Judge Lovric’s Report-Recommendation (Dkt. No. 14) is **ADOPTED**; and it is further

ORDERED that the decision of the Commissioner is **REVERSED**, and this action is **REMANDED** to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with this Decision and Order; and it is further

ORDERED that the Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: June 5, 2023
Syracuse, New York


Brenda K. Sannes
Chief U.S. District Judge